Supreme Court, U.S.
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No. 98-1082

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1998

ARTHUR CALDERON, WARDEN, *Petitioner*,

v.

UNITED STATES DISTRICT COURT FOR THE CENTRAL DISTRICT OF CALIFORNIA, *Respondent*,

HORACE EDWARDS KELLY, *Real Party in Interest.*

ON WRIT OF CERTIORARI TO THE NINTH CIRCUIT

PETITIONER'S SUPPLEMENTAL BRIEF

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PETITIONER'S SUPPLEMENTAL BRIEF

Since the filing of the Petition for Writ of Certiorari, the United States Court of Appeals for the Sixth Circuit has delivered an opinion which is in direct conflict with the Ninth Circuit opinion below on the question of whether a petition for appointment of counsel initiates a habeas case for the purpose of determining if the Antiterrorism and Effective Death Penalty Act of 1996 (AEDPA) applies.

In Williams v. Coyle, ___ F.3d ___, 1999 WL 64556 *3 (6th Cir.), the court considered whether this Court's opinion in Hohn v. United States, 524 U.S. 236, 118 S. Ct. 1969, 141 L. Ed. 2d 242 (1998), required that a request for the appointment of counsel under 21 U.S.C. § 848(q)(4)(B) prior to the effective date of the AEDPA resulted in the case being pending and therefore outside the scope of the AEDPA. In rejecting this argument and holding that the AEDPA applied unless a petition for writ of habeas corpus had been filed prior to the statute's effective date the court specifically disagreed with the Ninth Circuit opinion below.

> Recently, the Ninth Circuit, sitting en banc, overruled its earlier precedent and held that a petition for the appointment of counsel does initiate a habeas case for the purposes of Lindh. See Calderon v. United States Dist. Ct. for the Cent. Dist. of Cal., --- F.3d ---, No. 98-70569, 163 F.3d 530, 1998 WL 848032, at *9-11 (9th Cir. Dec.8, 1998). The Calderon court concluded that this determination was compelled by the Supreme Court's recent decision in Hohn v.

> United States, 524 U.S. 236, 118 S.Ct. 1969, 141 L.Ed.2d 242 (1998). We disagree that Hohn requires this result.

Williams v. Coyle, ___ F.3d ___ 1999 WL 64556 at *3

In light of the above there is now a real and intolerable conflict between the Courts of Appeals on this issue which has been presented as Question 2 in the Petition for Writ of Certiorari now pending before this Court. Unless certiorari is granted federal habeas petitioners who filed petitions on the same date would have their claims considered under different rules depending upon which federal court had jurisdiction.

CONCLUSION

Accordingly, this Court should issue a writ of certiorari.

Dated: March 10, 1999.

Respectfully submitted,

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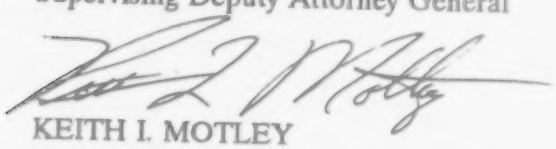

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